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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,334	05/12/2005	Jean-Max Huot	MART0890US	3598
24235 7590 02/03/2010 LEVINE & MANDELBAUM 222 Bloomingdale Road Suite 203 WHITE PLAINS, NY 10605			EXAMINER BOUCHELLE, LAURA A	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 02/03/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/562,334

Applicant(s)

HUET, JEAN-MAX

Examiner

LAURA A. BOUCHELLE

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huet (EP 1116493) in view of Brierley et al (US 5116324). Huet discloses an anti-stick device comprising a needle 17 having a bend, a needle holding panel F, a base panel C, a covering panel A, walls, E,B, the base panel and the needle holding panel having holes 15, 16 to receive the needle, the base panel having branches D, and the needle holding panel having lugs 9, 10. See Fig.1. The device functions in the same manner as applicant's invention. See Figs. 1-10. The device of Huet is capable of being used to access an implanted chamber.
3. Claim 1 differs from Huet in calling for the base panel and the needle holding panel to be curved. Brierley teaches a device for covering an IV site on a patient's skin wherein the device is formed with a curve so that it can conform to the comfortably to the curve of the back of the hand and wrist area to provide increased security to the site (Col. 7, lines 39-49). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Huet to have an overall curved contour to the skin contacting surface as taught by Brierley to conform to the patient's body to increase stability of the needle and thus patient comfort.
4. Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huet in view of Brierley as applied to claim 1 above, and further in view of Knotek (US 5531704). Claim 2 differs from Huet in calling for the device to include a hard plastic material on the first pair of branches on the base panel. Knotek teaches a needle puncture protection device have a panel

configuration similar to that of Huet but further including a hard plastic portion 30 that maintains the needle in the safety position (Sol. 7, lines 9-15). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Huet to include a hard plastic portion as taught by Knotek that ensures that the needle stays within the safety enclosure to prevent accidental sticks.

Response to Arguments

1. Applicant's arguments, see page 2, filed 11/18/09, with respect to the rejection of claim 1 under 112 have been fully considered and are persuasive. The rejection of claim 1 under 112 has been withdrawn.
2. Applicant's arguments with respect to the rejection of claims 1-8 under 103 have been fully considered but they are not persuasive.
3. Applicant argues that Huet fails to teach that the two opposite lateral branches have a curvature. The examiner agrees and relies upon Brierley to teach that this feature is known and obvious to combine with the device of Huet.
4. Applicant argues that Huet fails to disclose the two opposite lateral branches of the panel are capable of being bent at will under the pressure exerted by two fingers of one hand in order to press these branches onto the skin and the chamber so as to hold the chamber in place when the operator withdraws the needles with the other hand. First, Applicant has clarified that the chamber is not being positively claimed and that any limitations including the chamber are intended use limitations only. Comparing the device of Huet as shown in Fig. 1 with the instant invention as shown in Fig. 1 of the instant disclosure, it is apparent that the only difference between these figures is the curvature and the hard plastic disc. Therefore, the device of Huet is

capable of performing the same functions as the instant device because there are no structural differences that would prevent it from being able to do so. The lack of curvature of the lateral branches does not prevent the device from holding a chamber in place.

5. Applicant argues that Brierley is concerned with stability and patient comfort, not holding a chamber in place as is applicant's device. Again, the chamber is not positively claimed, and Huet is capable of holding a chamber in place, so Brierley need not be concerned with that. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

6. Applicant argues that nowhere in the cited art is there any mention or suggestion to use a base panel having pre-curved branches. Brierley provides the general teaching of providing a curved configuration to a member so that the device will conform to the hand or arm or whatever the location of the needle may be. This teaching applied to Huet would give an over all curved configuration to the base panel and its branches.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle
Examiner
Art Unit 3763

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Examiner, Art Unit 3763

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/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763